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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

No. [illegible]

ARTHUR L. COX, Successor Guardian of Aquilla Redditt,
Petitioner,

vs.

STATE OF TENNESSEE, by and Through Its Attorney General and Reporter, GEORGE F. McCANLESS,
and
CENTRAL STATE HOSPITAL, a Corporation, by and Through Its Superintendent, Dr. O. S. HAUK,
and
WESTERN STATE HOSPITAL, a Corporation, by and Through Its Superintendent, DR. EDWIN M. LEVY,
Respondents.

BRIEF

In Opposition to Petition for a Writ of Certiorari to the Supreme Court of Tennessee.

THOMAS L. FOX,
Deputy Attorney General,
State of Tennessee,
Supreme Court Building,
Nashville, Tennessee 37219,

C. HAYES COONEY,
Assistant Attorney General,
State of Tennessee,
Supreme Court Building,
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Michel v. Louisiana, 350 U. S. 91, 101 (1955), 76 S. Ct. 158, 164, 100 L. Ed. 83, 93 8, 9, 11

N. A. A. C. P. v. Alabama ex rel. Patterson, 357 U. S. 449, 460, 78 S. Ct. 1163, 1171, 2 L. Ed. 2d 1488, 1497 8, 9, 11

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WESTERN STATE HOSPITAL, a Corporation, by and Through Its Superintendent, DR. EDWIN M. LEVY,
Respondents.

BRIEF

In Opposition to Petition for a Writ of Certiorari to the Supreme Court of Tennessee.

JURISDICTIONAL STATEMENT

In this case, the Petitioner seeks a review of the final decree of the Supreme Court of Tennessee, entered on April 4, 1961, awarding the State of Tennessee and two

(2) of its mental hospitals, namely Central State Hospital at Nashville, Tennessee and Western State Hospital at Bolivar, Tennessee, both corporations, a recovery from the estate of Aquilla Redditt for the reasonable cost of care, treatment and support rendered to Aquilla Redditt in the two (2) aforesaid hospitals from October 15, 1924, to April 1, 1967, in the amount of $22,351.11 plus costs. The Respondents deny that any substantial questions are presented.

OPINION BELOW.

The opinion of the Tennessee Supreme Court in this case has not yet been officially reported, but may be found at 439 S. W. (2d) 267 (Tenn. 1969). The trial court did not render a written opinion, but correct copies of the aforesaid opinion and final decrees in the trial and appellate courts are attached to the Petitioner's petition as Exhibit A.

JURISDICTION.

This suit was instituted in 1961 by the State of Tennessee through its Attorney General and the Superintendents of two (2) of its mental hospitals, namely Central State Hospital at Nashville, Tennessee, and Western State Hospital at Bolivar, Tennessee, to recover from the estate of Aquilla Redditt from October 15, 1924 to April 1, 1967. The validity of the statutes was attacked in the trial court and in the Supreme Court of Tennessee under the Constitution of the State of Tennessee and under certain portions of the Constitution of the United States, however, the Respondents deny that the requirements of invoking the jurisdiction of this Honorable Court on the questions raised in this appeal have been met in that these questions *per se* have not been raised prior to their presentation herein as will be discussed hereinafter. Further, as pointed out in the Petitioner's brief the final decree of the Tennes-

see Supreme Court was entered on April 4, 1969 and notice of appeal was filed in the trial court on June 26, 1969. Under Title 28, United States Code, Section 2101 (c) appeals or writs of certiorari intending to bring any decree in a civil action before this Honorable Court for review are required to be taken or applied for within ninety (90) days after the entry of such decree, however, a justice of this Honorable Court, for good cause shown, may extend the time for applying for a writ of certiorari for an additional sixty (60) days. Ninety (90) days from the date of the aforesaid final decree of the Tennessee Supreme Court on April 4, 1969, expired on July 4, 1969. The Respondents are advised that an application for an extension of time was not made by the Petitioner until July 3, 1969, and on July 11, 1969, Mr. Justice Stewart ordered the Petitioner time for filing a petition for a writ of certiorari extended to August 4, 1969, without prejudice to the court's consideration of the timeliness of the application (See A and B Exhibits hereto). The Petitioner states in his brief herein that jurisdiction is conferred upon this Honorable Court by Title 28, United States Code, Section 1257 (a). The Respondents recognize that the jurisdiction of this Honorable Court to review this decision may exist under Title 28, United States Code, Section 1257 (3) by a writ of certiorari rather than by an appeal at this time but they are unable to find any Section 1257 (a) thereof.

QUESTIONS PRESENTED.

The Respondents are dissatisfied with the presentation of the questions by the Petitioner and, therefore, pursuant to **Rule 40 (3)** of the **Supreme Court Rules**, present the questions as follows:

(4) Whether or not the State of Tennessee and its mental hospitals may validly recover, pursuant to State statutes, from the estate of a person confined or hospital-

ized in its mental hospitals since 1924 under a court order resulting from such person's plea of present insanity to a murder indictment and jury verdict finding him to be presently insane, the reasonable cost of care, treatment and support rendered him in such hospitals or are such statutes involved under the due process, equal protection, and cruel and unusual punishment clauses of the Constitution of the United States?

(2) Has the Petitioner been denied any other federal right, whether or not such denial is capable in itself of being brought to this Honorable Court on appeal or certiorari?

STATUTES INVOLVED.

Sections 17 and 18 of Chapter 17 of the Public Acts of the 1919 General Assembly of the State of Tennessee, which were later codified as Tennessee Code Annotated Sections 33-631 and 33-706, are the State Statutes herein involved and the same were repealed by Chapter 38, Section 48 and Chapter 82, Section 21 of the Public Acts of the 1965 General Assembly of the State of Tennessee, Tennessee Code Annotated Section 33-707 is also however involved herein. State statute reads as follows:

> "When any person confined in a state hospital, charged with crime and subject to be tried therefor, or convicted of crime and subject to punishment therefor, shall be restored to sanity, the superintendent shall give notice thereof to the clerk of the court by whose order he was confined, and deliver such patient to the sheriff of the county from which said patient was committed."

STATEMENT OF THE CASE.

Aquilla Redditt was indicted in the Criminal Court of Shelby County, Tennessee, on October 14, 1924, for the murder of his mother. At his arraignment he appeared in person and with his attorney and entered a plea of present insanity to the indictment. A trial on the issue of his present insanity was held and a duly constituted jury determined that he was presently insane. In accordance with the State law then existing he was forwarded to Western State Hospital to be confined and, upon his being restored to sanity, returned to the committing court for trial. He was confined at Western State Hospital at Bolivar, Tennessee, from October 16, 1924, to November 10, 1932, at which time he was properly transferred to Central State Hospital in Nashville, Tennessee, where he remained at all material times.

The parties hereto stipulated that "the insanity of Aquilla Redditt on October 15, 1924, at all times since and at present, was and is congenital, complete and beyond any known treatment. This fact is corroborated by a letter dated January 22, 1962, and made a part of this record, from the doctor who was then the Director of Maximum Security at the aforesaid Central State Hospital. The parties further stipulated that Aquilla Redditt was never married and had no children; that his mother and father were both deceased; that he had one (1) living brother and one (1) living sister, both of whom had also been adjudged mentally incompetent and whose estates were also being administered by the Petitioner.

When Aquilla Redditt was originally admitted to the aforesaid Western State Hospital in 1924, he was classified as a poor person under State law and as such entitled to his hospitalization at the expense of the State of Tennessee. This classification was retained until the

commencement of this suit on May 11, 1961, at which time the State of Tennessee determined that he had always been and was at that time a private-pay patient, or one with a sufficient estate of his own to pay for the cost of his care, treatment and support, as defined under State law. The State sought, pursuant to the aforementioned State statutes, to recover from his estate the reasonable cost of the care, treatment and support rendered him from the aforesaid date of his admission to April 1, 1967. The State agreed in the latter stage of the case to limit possible recovery to those assets acquired by Aquilla Redditt from his father, who died in 1950, and from his brother, who died in 1949.

ARGUMENT.

I.

The first contention presented by the Petitioner is whether or not the State of Tennessee and its mental hospitals may validly recover, pursuant to State statutes, from the estate of a person hospitalized in its mental hospitals since 1924 under a court order resulting from such person's plea of present insanity to a murder indictment and jury verdict finding him to be presently insane, the reasonable cost of the care, treatment, and support rendered him in such hospitals or are such statutes invalid under the due process, equal protection, and cruel and unusual punishment clauses of the Constitution of the United States?

Within this question the Petitioner apparently first contends that State statutes such as those herein involved effect an allocation of pre-trial detention expenses which unconstitutionally and invidiously discriminates against the insane defendant. Initially the Respondents state, that contrary to the statement in the Petitioner's petition, the purpose of Aquilla Redditt's hospitalization and confinement is not solely to await trial, but it is to also provide him care and treatment for his mental condition until the time when, by proper care and treatment, he is able to stand trial for his alleged violation of the State's criminal law. Tennessee Code Annotated Sections 33-706 and 33-707, when properly read in *pari materia*, clearly demonstrate only an intention that insane persons charged with a crime shall be committed to a mental hospital to be cared for and treated and supported like any other mentally ill person, until he can stand trial.

Further, this contention itself was not raised or assigned as error upon his appeal to the Tennessee Supreme Court (See Opinion, Appendix A3 to Petition). It is well

settled that this Honorable Court will not review questions which have not been raised below. See, **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules; N. A. A. C. P. v. Alabama ex rel. Patterson,** 357 U. S. 449, 466-467, 78 S. Ct. 1163, 1174, 2 L. Ed. 2d 1488, 1502; **Michel v. Louisiana,** 350 U. S. 91, 101-102, 76 S. Ct. 158, 164, 100 L. Ed. 83, 93; **Beauharnais v. Illinois,** 343 U. S. 250, 264-265, 72 S. Ct. 725, 734-735, 9 L. Ed. 919, 931-932.

The second contention made by the Petitioner apparently within this issue is that the statutes herein involved impose a cruel and unusual punishment upon insane defendants. The Respondents assert that the Petitioner is not being punished herein and that this contention also was not raised or assigned as error upon his appeal to the Tennessee Supreme Court (See Opinion, Appendix A3 to the Petition). It is well settled that this Honorable Court will not review questions which have not been raised below. See, **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules,** and **N. A. A. C. P., Michel,** and **Beauharnais** cases, *supra.*

The third contention raised by the Petitioner also apparently within this question is that the statutes involved permit property of an insane defendant to be taken for a public purpose without just compensation. The Respondents assert that the recovery herein sought was merely recompense for the reasonable cost of the care, treatment and support rendered him personally during the time period herein involved at the aforesaid mental hospitals. The Petitioner has never denied the reasonableness of these costs or that he personally did not receive care, treatment and support. There is nothing in this record to show that other persons at these hospitals who can also afford to pay for the same care, treatment and support are not doing so. Further, this contention also was not raised or assigned as error upon his appeal to the Tennessee Supreme Court (See Appendix A3 to Peti-

tion). It is well settled that this Honorable Court will not review questions not raised below. See **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules**, and **N. A. A. C. P., Michel** and **Beauharnais** cases cited, *supra.*

The fourth contention raised by the Petitioner also apparently within this issue or question is that the statutes herein involved attack an unconstitutional condition to the grant on one's due process right not to be tried for a crime unless capable of assisting in one's own defense. The Petitioner asserts that a defendant who claimed his right to due process of law by entering a plea of present insanity was granted it only upon the condition, inherent in the statutes involved, that he become liable for the State's expenses in holding him for trial while incompetent; that this condition, not imposed upon sane defendants who seek continuances for other reasons, had no rational purpose and do not conform to the requirements of due process. The Respondents deny that these statutes place any condition upon the Petitioner's right to due process of law or hindered him in making his plea of present insanity and deny that they placed a financial penalty upon pleading such incompetency. To the contrary, a defendant is free to enter such a plea and, if he is found to be insane by the jury, he will be hospitalized for care and treatment regardless of his financial situation. Further, this contention also was not raised or assigned as error upon his appeal to the Tennessee Supreme Court (See Opinion, Appendix A3 to the Petition). It is well settled that this Honorable Court will not review questions not raised below. See, **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules**, and **N. A. A. C. P., Michel**, and **Beauharnais** cases, *supra.*

The fifth contention raised by the Petitioner also apparently within this issue or question is that the statutes herein involved impose a penalty upon insane defendants without an adjudication of guilt, contrary to due process

of law. Herein the Petitioner contends that he is under one system of jurisprudence, presumptively innocent of any crime; that he will remain so until the day he dies; that, nevertheless, the State of Tennessee, through these statutes, seeks to exact a financial penalty upon him based solely upon compulsory incarceration under criminal process and that imposition of a penalty in these circumstances violates due process of law. It is true that the Petitioner has not been tried or convicted of any crime and that, at the present time under our jurisprudence, he is presumed innocent of any crime. It is also true that he has been adjudged by a jury of his peers to be presently insane; and it was stipulated that he has been completely and congenitally insane ever since and beyond any known treatment in 1962. The record shows, however, that he has been receiving care, treatment and support during the entire time that he has been hospitalized. The Respondents aver that the Petitioner is not being penalized under criminal process, but, to the contrary, the Respondents are only seeking recompense for the *quid pro quo* rendered in the form of hospitalized care and maintenance. The fact must be remembered that the Petitioner is not a criminal, but a patient committed to a mental hospital pursuant to his own request, and his confinement is not for a crime. The Petitioner has not yet entered a plea to the merits of the charge against him and, unless some new treatment is developed, he never will enter such a plea. The statutes herein involved provide no punishment, pain or penalty. Further, this specific question was not raised in the Tennessee Supreme Court and under the citations, supra, will not be reviewed by this Honorable Court as a result thereof.

II.

The second contention presented by the Petitioner is whether the Petitioner has been denied any other federal right, whether or not such denial is capable in itself of

being brought to this Honorable Court on appeal or certiorari?

The import of this contention by the Petitioner is not clear and specific to the Respondent, however, apparently the Petitioner questions whether any other federal right has been denied the Petitioner which is capable of being brought to this Honorable Court on appeal or certiorari. This contention was also not raised or assigned as error upon his appeal to the Tennessee Supreme Court and cannot now be reviewed by this Honorable Court. See, **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules,** and **N. A. A. C. P., Michel** and **Beauharnais** cases, *supra.* Further, the only type of question which can properly be raised under Title 28, Section 1257 (2) or (3) regarding a state statute is whether it is a violation of a provision of the Federal Constitution, a treaty or law, not whether it violates some "other federal right."

CONCLUSION.

As the petition presents no question which merits this Honorable Court's review upon a writ of certiorari, the Respondents respectfully submit that this petition for a writ of certiorari should be denied.

Respectfully submitted,

THOMAS E. FOX,
Deputy Attorney General,
State of Tennessee,
Supreme Court Building,
Nashville, Tennessee 37219,

C. HAYES COONEY,
Assistant Attorney General,
State of Tennessee,
211 Supreme Court Building,
Nashville, Tennessee 37219.

APPENDIX.

APPENDIX.

EXHIBIT A.

Office of the Clerk,
Supreme Court of the United States,
Washington, D. C. 20543.

July 8, 1969.

Daniel A. Rezneck, Esq.
Arnold & Porter
1229 19th St., N. W.
Washington, D. C. 20036

Re: Cox, Successor Guardian of
Redditt v. Tennessee, et al.,
No. ..., Oct. Term, 1969.

Dear Mr. Rezneck:

Your application for an extension of time to file a petition for a writ of certiorari in the above cause was presented to Mr. Justice Stewart who, on July 7th, signed an order extending the time to August 4, 1969, without prejudice to the Court's consideration of the question of the timeliness of this application.

A copy of the Justice's order is enclosed.

Very truly yours,
John F. Davis, Clerk,
By /s/ E. P. Cullinan,
E. P. Cullinan,
Chief Deputy.

Encl.
EPC:ht
cc: Hon. George F. McCanless
Attorney General of Tennessee
Supreme Court Bldg.
Nashville, Tenn. 37219

EXHIBIT B.

Office of the Clerk,
Supreme Court of the United States,
Washington, D. C. 20543.

July 14, 1969.

C. Hayes Cooney, Esq.
Assistant Attorney General of Tennessee
Supreme Court Bldg.
Nashville, Tenn. 37219

Re: Cox, Successor Guardian of
Aquilla Redditt v. Tenn.,
ex. rel. McCanless, et al.,
No. ..., Oct. Term, 1969.

Dear Mr. Cooney:

Replying to your letter of July 11th, you are advised that the application for an extension of time in the above case was presented to this office on July 3d, and tolls the time for filing such an extension. It was signed by Mr. Justice Stewart on July 11th, so that my letter of July 9 was in error in saying that he signed the order on July 3d.

Insofar as the extension of time is concerned, it is perfectly valid. However, the question of the timeliness of the application may be open to question.

Very truly yours,
John F. Davis, Clerk,
By /s/ E. P. Cullinan,
E. P. Cullinan,
Chief Deputy.

EPC:ht